IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Alsa Ram Meghwal v. R.P.S.C. & Anr.

S.B.CIVIL WRIT PETITION NO.2281/2005
under Articles 226 and 227 of the Constitution of India.

Date of Order : 11th July, 2006

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. Siddharth Joshi for Mr.J.P.Joshi, for the RPSC.

BY THE COURT :

In accordance with Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examination) Rules, 1999 (hereinafter referred to as "the Rules of 1999") the Rajasthan Public Service Commission (hereinafter referred as "the Commission") by its notification dated 6.4.2004 invited applications from desirous candidates to appear in Rajasthan State & Subordinate Services Combined Competitive Examination, 2003.

The petitioner, a member of Scheduled Caste and an existing employee of Government of Rajasthan, submitted application in pursuant to the notification dated 6.4.2004 to appear in the combined competitive examination of 2003 but the Commission rejected

petitioner's candidature by treating him over age. Dissatisfied with the aforesaid decision of the Commission this petition for writ is preferred claiming the relief to declare the petitioner within the age limit prescribed for appearing in the examination concerned and to be appointed in State and Subordinate Services specified in Schedule-I and Schedule-II with the Rules of 1999.

The Governor of Rajasthan while exercising powers under proviso to Article 309 of the Constitution of India enacted the Rules of 1999 to regulate appointment to Rajasthan State and Subordinate Services by way of direct recruitment. Rule 4 of the Rules of 1999 provides that through a combined competitive examination conducted by the Commission, recruitment to the posts specified in Schedule-I and Schedule-II shall be made. Rule 4 of the Rules of 1999 reads as under:-

> "4.Combined Competitive Examination for State and Subordinate Services.-- (1) Notwithstanding anything contained in any rules governing direct recruitment through the agency of the commission to the posts in State and Subordinate Services mentioned respectively in Schedule-I and Schedule-II, direct recruitment to such posts shall be made by a Combined Competitive Examination to be conducted by the Commission in accordance with these Rules:

Provided that 7% of the available vacancies in the State Services to be filled in by direct recruitment shall be reserved for candidates, who are non-gazetted employees of the Government, Panchayat Samitis and Zila Parishads. The above reservation shall be determined in accordance with the roster prescribed by the Government.

(2)In order to be eligible to compete at the Combined Competitive Examination, an employee referred to in sub-rule(1), must satisfy the following conditions, namely:-

(i) Educational qualifications.-- As prescribed in Rule 12 of these Rules.

(ii) Age.-- He must have attained the age of 25 years and must not have attained the age of 40 years on the 1st day of January next following the last date fixed for receipt of applications.

(iii) Experience.-- He must have completed not less than five years of service whether officiating or substantive, on the 1st day of January next following the last date fixed for receipt of applications.

(3)In filling the vacancies so reserved, the candidates who are “non-gazetted employees” shall be eligible for appointment in the order in which their names appear in the list irrespective of their relative marks as compared with other candidates.

> (4)If a sufficient number of candidates who are non-gazetted employees is not available for filling all the vacancies so reserved, the remaining vacancies shall be filled by appointing other candidates in the list."

From reading of sub-rule(2) of Rule 4 of the Rules of 1999 it is apparent that a candidate desirous to face combined competitive examination from the category of non-gazetted employees must have attained the age of 25 years and must not have attained the age of 40 years on the 1st day of January next following the last date fixed for receipt of applications.

Rule 5 of the Rules of 1999 provides for holding examination as provided under Rule 4 every year to fill up the posts specified in Schedule-I and Schedule-II.

Rule 13 of the Rules of 1999 also prescribe age limit for appointment to the posts specified in Schedule-I and Schedule-II of the Rules of 1999. According to Rule 13 a person desirous to appear in combined competitive examination must have attained the age of 21 years and must not have attained the age of 33 years on the 1st day of January next following the last date fixed for receipt of applications. Certain relaxations are given in the maximum age limit to face combined competitive examination in various

provisos to Rule 13 of the Rules of 1999. Rule 13 of the Rules of 1999 referred above reads as under:-

> "13.Age.--Notwithstanding anything contained regarding age limit in any of the Service Rules governing direct recruitment through the agency of the Commission to the posts in the State Services and in the Subordinate Services mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by Combined Competitive Examination conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 33 years on the first day of January next following the last date fixed for receipt of applications:
> Provided that:-
>
> (1)the upper age limit mentioned above shall be relaxed by 5 years in the case of woman candidate and the candidates belonging to the Scheduled Castes and the Scheduled Tribes of Rajasthan;
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> (2)The upper age limit mentioned above shall not apply in the case of an ex-prisoner who had served under Government on a substantive basis on any post before conviction and was eligible for appointment under the rules;
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> (3)the upper age limit mentioned above shall be relaxed by a period of equal to the term of imprisonment served in the case of an ex-prisoner who was not over age before his conviction and was eligible for appointment under the rules;

(4)the upper age limit mentioned above shall be relaxable by a period equal to the service rendered in the N.C.C. in the case of Cadet Instructor and if the resultant age does not exceed the prescribed maximum age limit by more than three years, they shall be deemed to be within the prescribed age limit;

(5)the upper age limit for the reservist, namely the defence personnel transferred to the reserve and ex-service personnel shall be 50 years;

(6)the upper age limit for persons service in connection with the affairs of the State in substantive capacity shall be 40 years;

(7)the Released Emergency Commissioned Officers, and Short Service Commissioned Officers after releases from the Army shall be deemed to be within the age limit even though they have crossed the age limit when they appear before the Commission had they been eligible as such at the time of their joining the commission in the Army;

(8)if a candidate would have been entitled in respect of his/her age to appear at the examination in any year in which no such examination was held he/she shall be deemed to be entitled in respect of his/her age to appear at the next following examination;

(9)there shall be no age limit in the case of widows and divorced women;

Explanation.--In the case of widow, she will have to furnish a certificate of death of her husband from the competent authority and in case of divorcee she will have to furnish the proof of divorce;

(10)the upper age limit for persons serving in connection with the affairs of Panchayat Samaties and Zila Parishads in substantive capacity shall be 40 years;

(11)the upper age limit for the candidates belonging to other Backward Classes shall be 35 years;

(12)the upper age limit for the candidate belonging to other Backward Classes shall be 35 years;

(13)a candidate who was eligible on 1.1.95, in respect of age to appear at the ensuring examination but did not appear or appeared and failed and thereafter became ineligible in respect of age to appear in any of the examination, shall be deemed to be eligible to appear at the next following examination after amendment comes into force."

From reading of Rule 13 of the Rules of 1999 it is clear that in general the maximum age limit to face a combined competitive examination is 33 years, however, a member belonging to Scheduled Caste is having a relaxation of five years under proviso (1) to Rule 13 and, therefore, he can face combined competitive examination upto the age of 38 years. Similarly, the upper age limit for the persons serving

in connection with the affairs of the State in substantive capacity is 40 years by force of proviso (6) to Rule 13 of the Rules of 1999.

Beside the above, according to proviso (8) to Rule 13 of the Rules of 1999 if a candidate would have been entitled in respect of his/her age to appear at the examination in any year in which no such examination was held he/she shall be deemed to be entitled in respect of his/her age to appear at the next following examination.

In the statutory background with regard to age limits under the Rules of 1999, as stated, the contention of counsel for the petitioner, while giving challenge to the decision of the Commission, is that the petitioner being a non-gazetted employee is entitled to appear in combined competitive examination upto the age of 40 years and then being a member of Scheduled Caste is having a right to get relaxation of five years in maximum age limit as prescribed in proviso (1) to Rule 13 with further exemption of three years as prescribed under proviso (8) to Rule 13 as no examination was held since last three years. According to counsel for the petitioner in the fashion above the petitioner is eligible to face combined competitive examination 2004 if he has not attained the age of 48 years. The date of birth of the petitioner is 26.6.1960 and, therefore, as on 1.1.2004 he was within

the upper age limit prescribed under the Rules of 1999 to undertake combined competitive examination.

Per contra, stand of the Commission, as stated in paras 3 and 4 of its reply to the writ petition, is as under:-

> "3.That the contentions raised in the writ petition are wholly mis-conceived. It was clearly mentioned in the Information Book-let supplied with the advertisement that a candidate can claim relaxation in the upper age limit on one count and he can not claim relaxation on cumulative basis. An example was also appended to Clause-6 of the Information Book-let wherein it was clearly stated that a substantive Government servant can claim upper age limit upto 40 years, but he being a Member of Scheduled Caste can not claim relaxation of 5 years in addition to the 40 years of upper age limit. Either relaxation can be claimed by him as a candidate belonging to S.C. Category or relaxation in the age can be claimed by him as a candidate belonging to the category of a substantive Government servant.
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> 4.That the respondent/Commission has thus not committed any error of law in rejecting the candidature of the petitioner. Since petitioner was born on 26.06.1960, he completed 40 years of age on 25.06.2000 and, therefore, as on 01.01.2004 he had crossed the upper age limit prescribed under the Rules and therefore, his candidature has been rightly rejected."

It is contended by Shri Siddarth Joshi, learned counsel appearing on behalf of the Commission that upper age limit to appear in combined competitive examination in general is of 33 years and by proviso a relaxation of five years is given to the Scheduled Caste. Similarly, the upper age limit by a proviso is fixed upto 40 years for the non-gazetted employees of the Government of Rajasthan. The relaxation of five years is available to a member of Scheduled Caste with the age prescribed in substantive rule i.e. Rule 13 but not with the age provided under proviso (6) to Rule 13 of the Rules of 1999 for non-gazetted employees of the Government of Rajasthan. It is further contended by learned counsel for the Commission that non-gazetted employees of the Government of Rajasthan are having a reservation upto the extent of 7% of total vacancies for appointment in State and the age limit prescribed for such employees is in sub-rule(2) of Rule 4 i.e. of 25-40 years. The age prescribed under sub-rule(2) of Rule 4 according to counsel for the Commission is required to be read with Rule 13 of the Rules of 1999.

Heard counsel for the parties.

The contention of counsel for the petitioner that the maximum age limit prescribed for a non-gazetted employee of Government of Rajasthan is 40 years and this age is required to be substituted in

Rule 13 and further a non-gazetted employee belonging to Scheduled Caste is entitled to five years relaxation in accordance with proviso (1) to Rule 13 of the Rules of 1999. This contention of counsel for the petitioner seems to be attractive but is devoid of merit. The non-gazetted employees forms an independent class and under the Rules of 1999 it is not separated as non-gazetted employees belonging to Scheduled Caste or Scheduled Tribe or Other Backward Class. An age relaxation is given to the employees connected to the State affairs as an incentive for their progress while remaining in services. A reservation is prescribed to non-gazetted employees of Government of Rajasthan in a tune of 7% of the available vacancies in the State Service and such employees are having the age limits to face combined competitive examination as provided under sub-rule(2) of Rule 4 of the Rules of 1999. Under sub-rule(2) of Rule 4 a non-gazetted government employee who has not attained the age of 40 years on 1st day of January next following the last date fixed for receipt of applications is eligible to appear in combined competitive examination. This reservation with higher age to be employed is also given as an incentive to the employees of the State Government for their progress.

Rule 4 of the Rules of 1999 provides maximum age limit for non-gazetted employees of Government of Rajasthan to appear in combined competitive

examinations and the Rule 13 of the Rules of 1999 provides certain relaxations in maximum age limit beside the normal age criteria to appear in combined competitive examination.

By the force of proviso (1) a relaxation to a member of Scheduled Caste is given in the age limit mentioned in substantive provision of Rule 13. The proviso (1) to Rule 13 of the Rules of 1999 in unambiguous terms mentions that upper age limit mentioned above shall be relaxed by five years in the case of candidates belonging to Scheduled Caste and the Scheduled Tribe of Rajasthan. The age limit mentioned above means the age of 33 years i.e. prescribed in Rule 13 of the Rules of 1999.

The age limit for person serving in connection with the affairs of the State in substantive capacity is prescribed as 40 years by proviso (6) to Rule 13, meaning thereby, the non-gazetted employees a class in it irrespective of caste, is already availing a relaxation upto the age of 40 years by force of proviso (6) to Rule 13 read with Rule 4 of the Rules of 1999. The intention of the Legislature to provide relaxation of five years to the candidates belonging to Scheduled Caste/Scheduled Tribe of the Rajasthan is only qua the maximum age limit prescribed for general candidates. Such relaxation is not at all available under the Rules of

1999 to the persons already serving in connection with the affairs of the State in substantive capacity.

The maximum age limit provided under proviso (6) to Rule 13 of the Rules of 1999 for the candidates serving in connection with the affairs of the State in substantive capacity is also required to be read with the age limit prescribed under sub-rule(2) of Rule 4 of the said Rules. It is relevant to note that Rule 4 also applies to the candidates serving the State of Rajasthan in connection to its affairs as it is also having application for employees of Panchayat Samitis and Zila Parishads. If the contention of the petitioner is accepted then the maximum age limit prescribed under sub-rule(2) of Rule 4 shall also be enlarged, though the legislature confined it within the age limits of 25-40 years of age. No interpretation of statute can be made contrary to a statute and against the intention of the legislature that enacted such statute.

In view of whatever discussed above, I am is of the considered opinion that the petitioner is not entitled for relaxation in maximum age limit beyond the age of 40 years on the count that he belongs to Scheduled Caste. The decision of the Commission to treat the petitioner over age on 1st day of January, 2004, therefore, does not suffers from any error.

Accordingly, the petition for writ is having no merit and the same is dismissed.

(GOVIND MATHUR),J.

kkm/ps.